



California Fair Political Practices Commission

October 28, 1988

The Honorable Bill Lockyer
Member of the Senate
State Capitol, Room 2032
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-88-374

Dear Senator Lockyer:

You have requested advice regarding your duties under the Political Reform Act (the "Act")^{1/}, as amended by Proposition 73 on the June 7, 1988 ballot.

QUESTIONS

Each year you have sent Christmas cards to local friends and supporters.

1. Will the continuation of this practice be permitted under Proposition 73?

2. Commencing in 1989, may Christmas cards be paid for with money left in your old campaign account which did not meet the limitations provided for in Proposition 73?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

We consider your request one for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. Effective June 8, 1988, Proposition 73 prohibited the sending of a mass mailing at public expense. In 1988, Christmas cards which constitute a mass mailing may be distributed provided they are not paid for with public funds.

2. Commencing next year, Christmas cards which constitute a mass mailing may not be paid for with campaign funds raised before January 1, 1989 which did not meet the contribution limits provided for in Proposition 73.

This advice is based upon emergency regulations adopted by the Commission. The Commission's permanent regulations may modify the advice.

FACTS

In the past, you have sent Christmas cards to local friends and supporters every December. You are concerned with the effect of Proposition 73 on the printing and mailing of Christmas cards.

ANALYSIS

Question 1

Section 89001, as amended by Proposition 73 on the June 7, 1988 ballot provides:

No newsletter or mass mailing shall be sent at public expense.

(Section 89001.)

Section 82041.5 defines the term "mass mailing" as follows:

"Mass mailing" means two hundred or more substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.

(Section 82041.5.)

The Act as amended by Proposition 73, now provides that no mass mailing shall be sent at government expense. (Section 89001.) The Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition. (See Regulation 18901, adopted as an emergency regulation, filed August 8, 1988; and Raye, et al. Advice Letters, No. A-88-220, copies enclosed.)

Regulation 18901 provides:

(b) A mailing will not be deemed to be prohibited by Section 89001 if the mailing meets all of the following criteria:

- (1) It is mailed by an elected officer's agency;
- (2) The stationery, forms and envelopes used for the mailing are the official stationery, forms and envelopes of the agency; and
- (3) The elected officer's name appears, if at all, only on the standard letterhead or logotype of the stationery, forms or envelopes and there are no other references to the officer, including his or her photograph or signature, in the mailing.

Presumably, the Christmas cards would include your signature or some other reference to you. Accordingly, a mass mailing of the cards could not be sent at public expense. The cost of printing and producing a mass mailing are a part of the cost of sending it. (Raye, et al. Advice Letter, supra.)

Question 2

You have also asked whether the Christmas cards may be financed with money left in your old campaign account which did not meet the limitations established by Proposition 73. Your question is based on Section 85306 of Proposition 73 which provides:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

(Section 85306.)

As we discussed on the telephone, this provision does not become effective until January 1, 1989. You indicated that your concern is with regard to Christmas cards which would be sent beginning in December 1989.

Commission emergency Regulations 18536, 18536.1 and 18536.2 establish a process for determining whether campaign funds held on January 1, 1989 may be used to support or oppose a candidacy for elective office, or are limited to uses other than to support a candidacy for elective office. Those campaign funds must be segregated to separate funds which were received within the contribution limits of Proposition 73, and those which were

not. Campaign funds which were received in excess of the contribution limits may not be used to support a candidacy for elective office. You have asked whether such funds may be used to finance your Christmas cards.

Emergency Regulation 18536.2 describes when an expenditure is to "support or oppose a candidacy for elective office." It provides in pertinent part:

(b) As used in Government Code Section 85306, an expenditure to "support or oppose a candidacy for elective office," means all of the following:

...

(4) Any expenditure made by a candidate, a committee controlled by one or more candidates, or a committee primarily formed to support or oppose one or more candidates, except for the following:

(A) Payment of the candidate's or committee's campaign debts incurred prior to January 1, 1989, for goods consumed or services completed prior to January 1, 1989.

(B) Payment of officeholder expenses. As used in this section, "officeholder expenses" means expenses incurred directly in connection with carrying out the usual and necessary duties of holding office, including but not limited to, travel between an officeholder's residence and public office, meetings with constituents which are not campaign-related meetings, and salary payments to staff for other than campaign activities. "Officeholder expenses" does not include expenses incurred in connection with newsletters, mass mailings and other campaign activities, such as campaign speeches, campaign fundraising, actions performed by campaign staff, or political advertising.

(Regulation 18536.2(b)(4)(A)
and (B), emphasis added.)

Thus, commencing in 1989, mass mailings of Christmas cards with your name, signature, photograph or any other reference to you may not be paid for with the funds which are restricted to uses other than to support a candidacy for elective office.

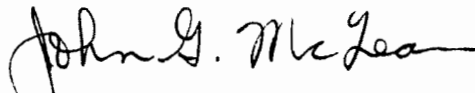
The Honorable Bill Lockyer
October 28, 1988
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It should be noted that this advice is based upon the Commission's emergency regulations and may be modified by the permanent regulations. Permanent Regulations 18536, 18536.1 and 18536.2 are scheduled for a public hearing at the Commission's meeting on November 9, 1988. Permanent Regulation 18901 is scheduled for a public hearing at the Commission's meeting on December 6, 1988.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in black ink, reading "John G. McLean". The signature is written in a cursive style with a large, stylized "J" and "M".

By: John G. McLean
Counsel, Legal Division

DMG:JGM:ld

Enclosures

Bill Lockyer Senator

10th S.D.

State Capitol, Sacramento 95814

September 23, 1988

Diane Griffiths, General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

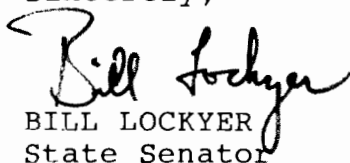
Dear Ms. Griffiths,

I'm writing to request an opinion from the FPPC regarding printing and mailing of Christmas Cards.

I have sent Christmas cards to local friends and supporters every December. Will the continuation of this practice be permitted under the new campaign reform guidelines? Can I finance Christmas cards with money left in the old campaign account which did not meet the limitations stipulated by Proposition 73?

I would appreciate your reviewing these questions and let me know your finding.

Sincerely,


BILL LOCKYER
State Senator

BL:eo



California Fair Political Practices Commission

September 29, 1988

Honorable Bill Locyker
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. 88-374

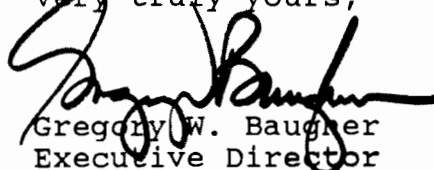
Dear Senator Lockyer:

Your letter requesting advice concerning the recently enacted campaign finance reform initiatives (Government Code Section 85100, et seq.) was received on September 28, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

Because of the delayed operative date of most of the provisions of these initiatives, and the numerous inquiries we are receiving relative to implementation, we are attempting to respond to questions regarding interpretation in an organized and efficient fashion. Due to the volume of requests and complexity of the issues involved, we will answer your question in a timely manner, but not within the usual twenty-one working days. (Government Code Section 83114(b).)

If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Gregory W. Baugher
Executive Director

GWB:plh:73FORM3

Bill Lockyer
Senator

10th S.D.

State Capitol, Sacramento 95814

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September 23, 1988

Diane Griffiths, General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

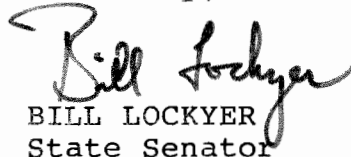
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State Senator

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